



# भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 49]  
No. 49]

नई दिल्ली, शनिवार, दिसम्बर 26, 1981/ पौष 5, 1903  
NEW DELHI, SATURDAY, DECEMBER 26, 1981/ PAUSA 5, 1903

इस भाग में जिन पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-Section (iii)

(संघ राज्यक्षेत्र प्रशासनों को छोड़ कर) केंद्रीय प्राधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं

Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

ELECTION COMMISSION OF INDIA

AND

NOTIFICATION

New Delhi, the 9th November, 1981

O.N. 1389.—In pursuance of section 160 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Karnataka dated 17th August, 1981 in Election Petition No. 1 of 1980.

IN THE HIGH COURT OF KARNATAKA AT  
BANGALORE

Bangalore, the 17th August, 1981

BEFORE

THE HON'BLE MR. JUSTICE N. R. KUDOR

Election Petition No. 1 of 1980

BETWEEN

D. P. Sharma  
son of Dhanraj Sharma,  
aged about 45 years,  
residing at No. 332,  
Albert Victor Road,  
Bangalore-560002.

.. Petitioner

1059 GI/81—1

(751)

1. The Commissioner and Returning Officer, 13, Bangalore South Parliamentary Constituency, Corporation of City of Bangalore, Bangalore.
2. R. Eswaralah, Major, No. 497/3, I Floor, Avenue Road, Bangalore-2.
3. M. S. Krishnan, Major 53, 'Krupa' Gayathri Devi Park Extension, Bangalore-3.
4. Krishna Rao, Major, 338/1, II Main Road, Malleswaram, Bangalore-3.
5. Jayakumar, Major, No. 4, 6th Cross, Gandhinagar, Bangalore-9.
6. S. Prakashkumar, Major, 76, 6th Cross, Gandhinagar, Bangalore.
7. M. S. Boraiah, Major, 2292, II Stage, Banashankari, Bangalore-70.
8. C. Mhadevaswamy, 259/1, II Block, T. R. Nagar, Bangalore-28.

9. B. A. Raja Rao Sindhe,  
617, III Floor,  
Rajeswari Market,  
Avenue Road,  
Bangalore City.
10. H. V. Venkataramaiah,  
Major, 48, 13th 'A' K  
Main, 17th A Cross,  
Malleswaram,  
Bangalore-3.
11. K. H. Sharma Major,  
No. 893, 4th T Block,  
38th A Cross,  
Bangalore-11.
12. T. R. Shamanna, Major,  
32, 4th Main, Narasimharaja  
Colony, Bangalore.
13. Shivanna, Major,  
2019, 2nd Stage,  
I Block, Rajajinagar,  
Bangalore-10.
14. K. Shivappa, Major,  
No. 8, V. H. Quarters,  
Bangalore.
15. P. Srinivasacharya,  
Major, Advocate,  
No. 19/30, Surveyor Street,  
Basavanagudi,  
Bangalore.
16. B. T. Shankara Hegde, Major, No. 511,  
Rajamahar Vilas, Bangalore-6.
17. G. Sadanand, Major,  
179, 6th Block, Rajajinagar,  
Bangalore-10.
18. G. M. Sabeel, Major,  
C/o Tippu Travels,  
J.C.W. Road Cross,  
Doddamavalli,  
Bangalore.
19. Swami Krishna Teertua,  
Major, 9, B. K. Hostel,  
Kilari Road,  
Bangalore-53.
20. Hottepaksha Rangaswamy  
Swami Ranganathananda Puri,  
Major, Ashrama Hampie,  
Bellary District.

.... Respondents.

Election petition filed by the petitioner under Section 80 to 98, 100 (i) (d)(iii)(iv) and Section 101 of the Representation of people Act, 1951 challenging the Election of Respondent No. 12 to the 13th Bangalore South Parliamentary Constituency in the State of Karnataka in General Election held on the 6th day of January, 1980 and seeking order that this Hon'ble Court may be pleased,

- (A) To order scrutiny and recount of the ballot papers in the Elections to the 13th Bangalore South Parliamentary Constituency;
- (B) To declare the election of the 12th Respondent to the said No. 13 Bangalore South Parliamentary Constituency on void;
- (C) To declare that the petitioner had been duly elected to the 13th Bangalore South Parliamentary Constituency.
- (D) to direct the Respondents to pay the costs of this petition;
- (E) To pass such further or other orders as this Hon'ble Court may deem fit and proper;

This Election Petition coming on for evidence on 16-2-1981, 17-2-1981, 18-2-1981, 19-2-1981, 20-2-1981, 2-3-1981, 3-3-1981, 5-3-1981, 11-3-1981, 16-3-1981, 26-3-1981, 27-3-1981, 6-4-1981, 8-4-1981, 16-4-1981, 13-4-1981 in the presence of Sri V. Krishna Murthy and Sri Rangaswamy

for Sri C. N. Narasimhachar Advocate for the petitioner Sri R. W. Narasimha Murthy for Sri S. V. Jagannath, Advocate for the Respondent-12 Sri S. G. Doddakalegowda, Government Advocate for the Respondent-1 Sri P. Srinivasiah Advocate for the Respondent-4 (absent) Sri K. Suryanarayana Rao, Advocate for the Respondent-9, Sri B. K. Venkate Krishna, Advocate for the Respondent-20 and the Respondents Nos. 2, 3, 5 to 8 10, 11, 13 to 15, 17 and 19 placed ex parte, Respondents Nos. 11, 16 and 18 absent and the Election Petition having stand over for Consideration in this Court made the following order on the 17th Day of August, 1981.

### ORDER

NARAYANA RAI KUDOOR, J.—This Election Petition is one under Sections 80 to 98, 100(1)(d)(iii) and (iv) and 101 of the Representation of the people Act, 1951, filed by certain D. P. Sharma, an unsuccessful candidate, who contested the Lok Sabha Election held on 6-1-1980 from the 13th Bangalore South Parliamentary Constituency on the Indian National Congress (I) party ticket, to set aside the election of the successful candidate T. R. Shamanna, the 12th respondent, who contested the said election on the Janatha Party Ticket. The 1st respondent was the Returning Officer and the remaining respondents were the other candidates contested the seat unsuccessfully from the same constituency.

2. The Election to the 7th Lok Sabha was held on 6-1-1980 as per the schedule of election programme notified by the Election Commission of India. The petitioner and respondents 2 to 20 contested the seat for Lok Sabha from the 13th Bangalore South Parliamentary Constituency (for short the 'Bangalore South Constituency'). The petitioner was the nominee of the Indian National Congress (I) Party (for short the 'Congress(I)'). The 12th respondent was the candidate of Janatha Party. Out of the remaining respondents some were party-candidates and some contested as independents.

The votes were counted on 7-1-1980 as notified in the Government Girls' High School premises situate in B. P. Wadia Road, Basavanagudi, Bangalore. The 1st respondent declared the 12th respondent duly elected to the Lok Sabha from the Bangalore South Constituency—he having secured the largest number of valid votes. The petitioner secured the next highest number of valid votes, the difference being 2,72 votes. S. P. Narayanaswamy Gowda, the Chief Election Agent of the petitioner filed an application before the 1st respondent for recount of the votes on certain grounds raised in the application before the 1st respondent declared the result. The 1st respondent rejected the said application holding no substance in the grounds and declared that the 12th respondent was duly elected as stated earlier. Thereupon, this petition came to be filed.

3. In brief, the averments made in the petition are these :

The counting agents of the petitioner could not see and supervise the ballot papers as the counting was done in undue haste and hurry; the agents of the other candidate were also allowed to count the ballot papers; objections were taken orally by the petitioner's counting agents; the counting officers and respondent-1 did not respond to their objections; counting was done in great hurry in spite of the objections as a result, a number of valid votes cast in favour of the petitioner were put in the box meant for the 12th respondent; the space in the counting hall wholly insufficient when compared to the number of persons present in the hall; the lighting was poor; a number of unauthorised person also gathered in the counting hall; there was lot of rush in the counting hall and it was impossible for the petitioner counting agents to keep track of the counting process; they could not get any opportunity to scrutinise and point out the invalid votes counted in favour of the 12th respondent; the petitioner had appointed 94 counting agents; the counting was scheduled to begin at 7 a.m. but actually it started at 8.45 a.m.; in between the counting agents who had come to the counting place were allowed to go out to take their breakfast nearly 50 counting agents of the petitioner who were allowed to go to have their breakfast were not allowed inside the counting hall when they came back at 8.45 a.m. well before the counting started thereby leaving wholly insufficient number of counting agents for the petitioner to look after the counting of votes on his behalf.

The petitioner then proceeds to give the particulars of the grounds in paras 13 and onwards of the petition. They will be adverted to as and when found necessary in the course of this order.

Having stated the details, the petitioner proceeds to formulate four main grounds on which he seeks the election of the 12th respondent to be set aside as they, according to him render the result of the election materially affected. These are : (1) improper reception of invalid votes in favour of the 12th respondent; (2) improper rejection of valid votes cast in favour of the petitioner; (3) improper inclusion of the valid votes of the petitioner in favour of the other respondent and (4) contravention of the Rules 53, 55 and 56 of the Conduct of Election Rules, 1961.

On these grounds, the petitioner has sought for the following reliefs : (i) order scrutiny and recount of the ballot papers used at the election to the Bangalore South Constituency; (ii) declare the election of the 12th respondent void ;

(iii) declare that the petitioner has been duly elected; (iv) direct the respondents to pay costs of the petition; and (v) pass such further or other orders as the Court deems fit and proper in the circumstances of the case.

4. The 1st respondent filed his written statement denying all the allegations made in the petition questioning the validity and regularity of the counting of votes. Proceeding further, he has positively averred that the counting was done in the normal way—not in haste and hurry—in the presence of the counting agents and representatives of all the candidates, under the supervision of the concerned officers. He denied that the votes cast in favour of the petitioner were counted in favour of the 12th respondent. He has further stated that there was abundant space in each of the counting halls; outsiders were not allowed inside during the counting; there was neither rush nor pressures; persons present in the counting hall were only the counting staff and the agents of the candidates; there was sufficient illumination in the hall; proper security arrangements were made by the police; badges were issued to the counting agents and all those counting agents who were provided with the badges were allowed inside the counting hall even after 8.45 a.m.; invalid votes were not counted in favour of the 12th respondent; counting was not done in haste and hurry; sufficient opportunity was given to the counting agents of all the candidates to supervise the counting and scrutiny of the ballot papers; application for recount filed on behalf of the petitioner was rejected by recording proper reasons; pieces of wet cloth had been provided by the polling officers for the use of the illiterate voters for rubbing the ink from their thumb after affixing their thumb mark on the counterfoil of the ballot paper; counting was done strictly in accordance with the rules; ballot paper account in Form-16 had been prepared by all the Presiding Officers; there is no truth in the allegation that the Corporation Officials were under the influence of the 12th respondent who was Corporator for several years; counting was done under the supervision of senior officers of integrity and as such there was no scope for any of the Corporation officials in any way of the Corporation officials in any way to manipulate the counting of votes in favour of respondent-12; counted ballot papers were duly bundled, each bundle of 50 ballot papers; doubtful votes of each polling station were sent to the table of the Assistant Returning Officer (ARO) for recording his decision on the said ballot papers and the invalid votes were rejected after proper scrutiny. On these grounds, he prayed for the dismissal of the petition.

5. Respondent-9 in his written statement stated that the arrangements made for the counting of votes were quite adequate. The process of counting went on in orderly and normal way. During his visit to several booths on the date of the polling, he saw wet cloth being invariably provided in all the booths he visited. As regards the various other allegations made in the petition, he put the petitioner to strict proof of those allegations. The other details contained in the written statement of the 9th respondent may not necessary to be mentioned as he did not take any part in the course of the enquiry except presenting the written statement.

6. The 12th respondent has filed a detailed written statement denying all the allegations made in the petition. As regards the propriety and regularity of the counting process, he supported the stand taken by the 1st respondent in his written statement. He further added that besides the Returning Officer (RO), counting staff, the counting agents and the candidates themselves, one Adirajiah, Senior I.A.S Officer and observer appointed on behalf of the Election Commission of India and R. Sampathkumaran, another I.A.S. Officer who was the Chief Electoral Officer for Karnataka were also present throughout the counting. No complaint regarding any

irregularity in the counting was made to them by anyone. This shows that the counting was done properly and in the normal course. On these grounds, the 12th respondent also prayed for the dismissal of the petition with exemplary costs.

7. After the respondents filed their written-statement, the petitioner filed an application (I.A. II) under Order VI Rule 17 read with Section 151 C.P.C. seeking permission to amend the Election Petition to include the averments set out in the application as paragraphs 19(a) to 19(d) after the original para 19 of the petition. Respondents 9 and 12 both opposed the application. The application was allowed by a considered order dated 28-10-1980. Thereupon, the 12th respondent filed his additional written statement in which he traversed the averments made in paragraphs 19(a) to 19(d) and denied the correctness of the same.

8. On the respective contentions of the parties, the following issues were settled for determination :

- (i) Whether the petitioner establishes the circumstances justifying recounting of vote ?
- (ii) Whether the petitioner proves that the result of the election in so far as it concerns the returned candidate, namely, respondent-12, has been materially affected by any non-compliance of the provisions of the Representation of the People Act, 1951 or of any rules or orders made under the said Act? And if so, whether the election of respondent-12 is void under the provisions of Section 100(1)(d)(iv) of the Representation of the People Act, 1951?
- (iii) Whether the petitioner proves that there has been contravention of the provisions of Rules 45, 53, 55 and 56 of the Election Rules, 1961 and Section 64 of the Representation of the People Act, 1951?
- (iv) Whether the petitioner proves that at the time of counting a number of unauthorised persons interested in respondent-12 had gathered in the hall, who surrounded the counting officers thus denying the petitioner and his counting agents an opportunity to see and scrutinise the ballot papers?
- (v) Whether the petitioner further proves that unauthorised persons were allowed inside and that his counting agents were not allowed by the police and that they were unlawfully prevented by the police from entering inside the counting hall?
- (vi) Whether the petitioner proves that number of votes have been declared invalid which were cast in favour of the petitioner?
- (vii) Whether the petitioner proves that counting of the ballot papers were done hastily without giving opportunity to the petitioner and his counting agents to supervise the counting? And if so, whether some of the votes were wrongly counted in favour of respondent-12, though they were cast in favour of the petitioner?
- (viii) Whether the petitioner further proves that on account of unauthorised persons in the counting hall, and the agents of the Janatha candidate who were allowed to count the ballot papers in many tables, many valid votes which were cast in favour of the petitioner were wrongly put in the box of respondent-12?
- (ix) Whether the petitioner proves that there has been improper reception of invalid votes?
- (x) Whether the petitioner proves that there has been improper rejection of valid votes?
- (xi) Whether the petitioner proves that by such improper reception, refusal or rejection of any vote or the receipt of any vote which is void, the election of respondent-12 is void under the provisions of Section 100(1)(d)(iii) of the Representation of the People Act, 1951?
- (xii) Whether the petitioner proves that there is a difference in votes to the extent of 632 when particulars in part II in Form No. 16 are compared with the corresponding entries as detailed in para 19A of the petition?
- (xiii) Whether the petitioner proves that there is a difference of votes when the entries in Form No. 16—Part II—relating to respondent-12 are compared with the

corresponding entries in Form No. 20 as detailed in para 17-B of the petition.

- (xiv) Whether the petitioner further proves that there is a discrepancy in the statutory particulars of Form No. 10-A and 10-B and the extent mentioned in respect of several booths more fully detailed in para 17-C and para 17-D of the petition, which demonstrates that there has been a clear violation of the provisions of section 100(1)(d)(iv) of the Representation of the People Act, 1951?
- (xv) Whether the petitioner proves that respondent-1 was not justified in not directing the recounting of votes as prayed for by the petitioner?
- (xvi) Whether the petitioner has made out a case for scrutiny and recount of the ballot papers?
- (xvii) Whether the petitioner has proved that the election of respondent-12 is void?
- (xviii) Whether the petitioner has proved that he is entitled to be declared as the duly elected candidate of the 12th Bangalore South Parliamentary Constituency?
- (xix) For what other relief or reliefs is the petitioner entitled to?
- (xx) What order?

8. The petitioner examined 9 witnesses and got marked 12 documents. The contesting respondents examined 5 witnesses and also got marked 15 documents.

9. The petitioner for setting aside the election of the 12th respondent and to declare the petitioner duly elected to the Bangalore South Constituency is founded on the grounds enumerated in Section 100(1)(d)(iii) and (iv) of the Representation of the People Act, 1951 (for short the 'Act'). The main ingredients of these two grounds are: improper reception, refusal or rejection of votes or the reception of votes which are void or any non-compliance with the provisions of the Constitution of India or of any Rules or Orders made under the Act thereby the result of the election in so far as it concerns a returned candidate has been materially affected. In other words, if an election of a returned candidate is sought to be assailed under Section 100(1)(d)(iii) or (iv), the person so assailing should, not only establish by proper and cogent evidence the various infirmities enumerated in sub-clauses (iii) or (iv) of clause (d) of sub-section (1) of section 10 but also further establish that thereby the result of the election in so far as it concerns the returned candidate has been materially affected.

10. The petitioner has detailed a number of instances in support of the reliefs sought for by him in his petition such as insufficiency of space in the counting halls, insufficiency of light, presence of large number of unauthorised persons inside the counting halls thereby causing disturbance to the peaceful conduct of the counting, counting of votes had been done in undue haste and hurry without affording reasonable and proper opportunity to the counting agents of the petitioner to scrutinize the ballot papers and supervise the process of counting, a good number of counting agents of the petitioner were not allowed to enter the counting halls on flimsy ground that they came late, thereby causing shortage of counting agents for the petitioner to supervise the counting at all the tables; rejection of large number of valid votes as invalid mostly cast in favour of the petitioner without justification; counting of invalid votes as valid votes in favour of respondent-12, counting of valid votes cast in favour of the petitioner as the votes for respondent-12, rejection of valid votes cast in favour of the petitioner as invalid on the ground they contained smudge ink marks; undue favouritism shown by the counting staff in favour of respondent-12 in the matter of scrutiny and counting he being a corporator for a long time, non-compliance with the provisions of the Rules and the orders made under the Act; rejection of large number of votes by the Returning Officer (RO) without properly applying his power of judgment; mixing up of bundles of valid votes cast in favour of the petitioner with the bundles of the sorted-out votes of the other candidates; failure to notice the objections raised by the counting agents of the petitioner at various stages of counting regarding the violation of the Rules and the orders relating the counting procedure including improper reception refusal or rejection of votes and the reception of votes which were void in favour of respondent-12 by the counting staff, the ARO and the RO and the narrow margin of

excess votes secured by respondent-12 over that of the petitioner. It is further averred in the petition that without scrutiny and recount of all the ballot papers, the allegations made by the petitioner about the improper rejection of valid votes cannot be corroborated. Hence, the petitioner sought for and order for scrutiny and recount of all the ballot-papers used at the election to the Bangalore South Constituency in the first instance.

11. However, Sri V. Krishnamurthy, learned Senior Counsel appearing for the petitioner, at the very outset, in the course of his arguments, submitted that the petitioner's endeavour to unsettle the election of respondent-12 and for a declaration that the (petitioner) is duly elected in his (R. 12) place to a seat in the Lok Sabha from the Bangalore South Constituency will not be successful without verification and scrutiny and recount of all the ballot papers used at the election to that constituency. So his chief arguments was for an order granting verification and scrutiny and recount of all the ballot papers used at the election.

The foundation for this prayer for granting verification and scrutiny and recount of all the ballot papers is the assumption that the counting process was vitiated on account of the several instances detailed in the petition to which a reference has already been made. Oral and documentary evidence has been produced by the petitioner. However, Sri Krishnamurthy did not press all of them in his arguments. He forcibly advanced only two points and submitted that if he could not persuade the court on these two points to accept his plea for making an order granting verification and recount of all the ballot papers, his client would fall in respect of all the reliefs sought for in the petition. The two points urged by Sri Krishnamurthy for my consideration were: (1) the process of counting was vitiated by errors apparent on the face of the record as could be seen on a perusal of the ballot paper account in Form-16 and the final result sheet in Form-20; and (2) improper rejection of ballot papers on the ground they contained smudge ink-mark in addition to the mark recording the vote in favour of the petitioner.

12. Sri R. N. Narasimha Murthy, learned counsel appearing for respondent-12, per contra, contended that the petitioner should fail on the primary ground that what has been averred in the petition has not been established, and what is claimed to have been established, has not been pleaded in the petition. As regards the alleged discrepancies in Part I and Part II of Form-16 (ballot-paper account) and Form-20 (final result sheet) on the basis of which it was contended on behalf of the petitioner that there was miscounting, it was the argument of Sri Narasimha Murthy that the election petition is defective inasmuch as the petition does not contain a concise statement of material facts on which the allegation of miscounting is founded as required under clause (a) of sub-section (1) of Section 83 of the Act. His further contention was that even otherwise, the existence of discrepancies in the ballot-paper accounts and the final result sheet by themselves would not lead to an inference of wrong counting or improper counting or miscounting. The allegations of wrong counting, improper counting and miscounting are required to be established not by speculation or inference but by positive evidence. The petitioner has not tendered even prima facie evidence on the allegation of improper reception, refusal or rejection of any vote or the reception of votes which were void or of non-compliance with the rules and the orders made under the Act. Regarding the allegation that the ballot-papers, on which votes were recorded in favour of the petitioner, were rejected on the ground they contained smudge marks, so proceeded the counsel, that the pleadings and the evidence adduced by the petitioner are wholly insufficient to justify an order for verification of the ballot papers and recount of the votes on this ground.

13. The learned Advocate-General appearing for the 1st respondent substantially supported the argument of the learned counsel for the 12th respondent regarding the regularity and propriety of the counting process in accordance with law. He further contended that no ground is made out for verification of the ballot papers and a recount of the votes.

14. Basing upon their respective contentions raised in the course of the arguments, both Sri R. N. Narasimha Murthy, learned counsel appearing for respondent-12 and the learned Advocate General appearing for the 1st respondent, maintained that the petition is liable to be rejected.

15. The law on the question of granting inspection or for that matter, sample inspection of the ballot papers in an election dispute is now well-settled. The decisions of the Supreme Court and of High Courts on this question are legion. Suffice for our purpose to refer to a few decisions of the Supreme Court.

In *Ram Sewak Yadav v. Hussain Kamil Kidwai* (1) pointing out that an order for inspection of the ballot papers in an election dispute cannot be granted as a matter of course but only under special circumstances, the Supreme Court observed at para 7 as follows:

"An order for inspection may not be granted as a matter of course. Having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled;

- (i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and
- (ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties; inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a bare allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

In *Dr. Jagjit Singh v. Giani Kartar Singh* (2), dealing with the discretion to allow inspection of ballot papers, the Supreme Court observed as follows:

"The true legal position in this matter is no longer in doubt. .... in a proper case, the Tribunal can order the inspection of the ballot boxes and may proceed to examine the objections raised by the parties in relation to the improper acceptance or rejection of the voting papers. But in exercising this power, the Tribunal has to bear in mind certain important considerations. Section 83(1)(a) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies; and in every case, where a prayer is made by a petitioner for the inspection of the ballot boxes, the Tribunal must enquire whether the application made by the petitioner in that behalf contains a concise statement of the material facts on which he relies. Vague or general allegations that valid votes were improperly rejected or invalid votes were improperly accepted, would not serve the purpose which S. 83(1)(a) has in mind. .... In dealing with this question, the importance of the Secrecy of the ballot papers cannot be ignored and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting. It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving of fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void. We do not propose to lay down any hard and fast rule in this matter; indeed, to attempt to lay down such a rule would be inexpedient and unreasonable."

In *Jitendra Bahadur Singh v. Krishna Behari* (5) Hegde, J. who spoke for the Bench, referred to certain basic requirements to be satisfied before an election tribunal can permit the inspection of the ballot papers as laid down by the Supreme Court and the High Courts, making specific reference to *Ram Sewak Yadav's* case (1) and *Dr. Jagjit Singh's* case (2). They were:

- (1) The petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies in support of his case; and
- (2) The Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary.

In *Suresh Prasad Yadav v. Jai Prakash Mishra* (4) Sarkaria, speaking for the Bench stated the broad guidelines as discernible from the decision of the Supreme Court in granting an order for inspection and recount of the ballot papers thus:

"The Court would be justified in ordering a recount of the ballot papers, only where:

- (1) The election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;
- (2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and
- (3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

The only other decision of the Supreme Court I propose to refer in this connection is the decision in *Bhabhi v. Sheo Govind* (5), Justice Fazl Ali, who spoke for the Bench, after reviewing a series of earlier decisions of the Supreme Court on this subject, summarised the conditions which are imperative before a Court can grant inspection, or for that matter, sample inspection of the ballot papers as follows:

1. That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
2. That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
3. The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
4. That the Court must come to the conclusion that in order to grant prayer for inspection, it is necessary and imperative to do full justice between the parties;
5. That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and
6. That on the special facts of a given case, sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount and not for the purpose of fishing out materials."

16. Let me now proceed to consider the points canvassed by Sri V. Krishna Murthy, for the petitioner. I shall consider the second point argued by him first:

(1) A.I.R. 1964 S.C. 1249.

(2) A.I.R. 1966 S.C. 773

(3) A.I.R. 1970 S.C. 277.

(4) A.I.R. 1975 S.C. 376.

(5) A.I.R. 1975 S.C. 2117.

This point has its foundation on the allegation that the votes recorded in favour of the petitioner were rejected on the ground they contained in addition some ink smudge mark.

17. First it is necessary to refer to the averments made in the petition regarding this plea. This is what we find in para 17 of the petition:

"The electorate consisted of both illiterate and literate voters. Every ballot paper will have a counterfoil at the top of the ballot paper. It is submitted that after the voter is placed in the electoral roll by the Polling Officer, the signature or thumb impression will be taken on the counterfoil of the ballot paper. It may be stated that no ballot paper will be issued unless he has put his signature or thumb impression on the counterfoil of the ballot paper. If the voter puts the thumb impression on the counterfoil of the ballot paper, he could clear his thumb with the help of a piece of wet cloth or rag provided to such voter. This was necessary to avoid smudge on the ballot paper while handling a ballot paper. It is submitted that in the instant case, the Polling Officer had not provided wet cloth or rag on the table to voters who put their thumb marks. On account of this about 5000 valid votes cast in favour of the petitioner were rejected as they were smudged or spoiled at some corner of the ballot paper on account of the voters handling of the ballot papers; due to the wet thumb impression ink with which they were asked to affix their thumb impression on the counterfoil. It is therefore, the non-providing of wet cloth or rag for removal of thumb impression ink by the first respondent is illegal. On account of this number of voters were invalidated. The election agents however after inspecting for some time, objected to this rejection of valid votes, and the counting officers and the first respondent did not heed to the objections of the agents of the petitioner the counting was done in a great hurry."

A further reference is made in para 28 reads thus:

"The petitioner further respectfully submits that the rejection of the ballot papers as they bore at the corner of the ballot paper a portion of the impression of the thumb impression mark of some of the voters which came to be affixed on account of the officers not providing the wet cloth or blotter for removing the wet seal after the voters have affixed their thumb impression on the counterfoils of the ballot papers has caused grave injustice to the petitioner."

The 1st respondent in his written statement has clearly stated after denying the allegations made by the petitioner in para 17 of the petition, that pieces of wet cloth had been provided by the Polling Officers for the use of voters for the purpose of cleaning their thumb.

Respondent-9 also in his written statement stated that on the day of polling, he visited several booths and he saw wet cloth being invariably provided in all the booths he visited.

Respondent-12, in dealing with the allegations made by the petitioner on this count, stated in his written statement as follows:

"The allegation in paragraph 17 of the petition relating to the non-availability of wet cloth or rag on the tables in polling booths for wiping the thumb marks of illiterate voters is not admitted. Proper arrangements in this behalf were made at all polling booths and the allegations in this behalf are vague and bereft of proper particulars and are liable to be rejected. It is not admitted that nearly five thousand valid votes cast in favour of the petitioner were rejected on the ground that they were smudged or spoiled at some corner of the ballot papers on account of the voters handling of the ballot papers. It is not true that the election agents objected to the rejection of valid votes on this ground as stated by the petitioner."

18. Next I shall refer to the evidence of the witnesses for the petitioner touching this subject.

P.W. 1 S. P. Narayanaswamy Gowda was the Chief Election Agent of the petitioner. On this topic, that is what P.W. 1 has stated in his Chief Examination:

"Something like about 5000 valid votes cast in favour of the petitioner were rejected as invalid on the ground that there was some smudge mark on the ballot papers.

The thumb impression or the signature of the voters were taken on the counterfoil of the ballot papers issued to the voters-thumb impressions in the case of illiterate voters and the signature in the case of literates. Wet cloth or rag was not provided to the voters to clean their thumb after affixing the thumb marks on the counterfoils. The ballot papers got smudged by handling them by the voters with the ink mark on their thumb used for affixing their thumb impression on the counterfoil.

The names of the candidates were serially numbered on the ballot papers in two rows in the alphabetical orders of their names. The petitioner was given the Sl. No. 11 on the right side column at the top.

Most of the voters held the ballot papers at the top. I saw most of the ballot papers got the smudging mark at the top of the ballot papers on the right side. The counting clerks rejected the votes recorded on the ballot paper on which such smudge marks were found. Most of such rejected votes related to the petitioner. There was no endorsement made by the counting staff then and there on the ballot paper that it was so rejected. I was not given any opportunity either by the Returning Officer or the Assistant Returning Officer to give my reaction regarding such endorsements of rejection of the votes recorded on the smudged ballot papers."

In his cross-examination, he has stated thus:

"I did not note the number of the ballot papers at least one or two in which votes were validly recorded in favour of the petitioner but they were rejected on the ground that there was smudge marks on those ballot papers. I did not verify from any of my counting agents whether they in their turn have noted the No. of any ballot paper on which vote was recorded in favour of the petitioner but rejected on the ground that it contained smudge marks. I have come to know from the very beginning that such ballot papers on which valid votes were cast in favour of the petitioner were rejected on the ground that it contained the smudge marks. I had seen such instances personally. I noticed such instances in all the constituencies and at all the counting tables. I did not instruct any of my counting agents at least to note down the No. of such ballot papers which have been rejected as aforesaid after I had noticed such rejections myself. I did not even instruct them at least to maintain the total No. of ballot papers so rejected at their table. The figure of 5000 being the rejected ballot papers on which valid votes were cast in favour of the petitioner was my estimate and not a correct account.

I have visited many of the polling booths in the Bangalore South Parliamentary Constituency. I did not insist any polling officer in writing to provide either wet cloth or the rag to clean the thumb of the voters. I did not even write to the Returning Officer that immediate arrangements should be made for providing wet cloth or rag for that purpose."

P.W. 2 G. Krishna Rao is a booking clerk under the petitioner in his transport establishment. He is said to be one of the counting agents participated in the counting. In his chief examination he has stated that ballot papers were rejected as invalid votes on the ground they contained smudge marks at his counting table. In all about 900 ballot papers were rejected as invalid on that ground alone. Out of 900 rejected ballot papers, in about 600 ballot papers, votes were marked in favour of the petitioner. He objected to the counting staff for rejecting those ballot papers as invalid.



The counting staff kept those 900 rejected ballot papers by their side on the counting table. In cross-examination, the witness has stated as follows :

"I did note down the No. of the ballot papers which were rejected by the counting staff on the ground that they contained smudge marks and informed them to P.W. 1. Now I say that what I recorded was the total No. of rejection of such ballot papers and not the No. of the ballot papers as such. I noted down the total No. of such rejected ballot papers on a piece of paper, I conveyed to P.W. 1 the total No. of such rejected ballot papers and P.W. 1 himself made a note of it. I informed P.W. 1 about the total No. of such rejected ballot papers at the end of the counting. I did not hand over the slip of paper on which I noted down the total No. of such rejected ballot papers to P.W. 1. While noting down the total No. of such rejected ballot papers, I had also noted down the No. of such rejected ballot papers on which the votes were recorded in favour of the petitioner. While noting down, I had looked into the ballot papers on which smudge mark was found and also the marking of the vote in favour of the petitioner and then made a note of it."

P.W. 3 M. N. Krishnaswamy is an employee under the petitioner. He also claims to be one of the counting agents of the petitioner. He has stated in his chief examination that he was allotted to the counting table No. 9. To his knowledge, about 900 ballot papers were rejected at his table during the entire counting. Out of these 900 rejected ballot papers, votes were recorded in favour of the petitioner roughly in about 600-700 ballot papers. The counting staff rejected all the 900 ballot papers as invalid, on the ground that there were double impressions on the ballot papers. In his cross-examination it was elicited that P.W. 1 instructed him as to what were all his duties as a counting agent. He had told him to note down on a piece of paper the details of the counting and the scrutiny of the ballot papers at his table. He noted down the details of the counting on a piece of paper as instructed by P.W. 1. The details he noted on the paper were not only incorrect but also incomplete due to confusion. He has not preserved that piece of paper. P.W. 1 used to see the paper on which he was noting down the details every time he came round the counting hall. He was noting down the number of votes secured by each candidate and also the number of rejected ballot papers at each round of counting. He did not make a note in whose favour vote was recorded in each of those rejected ballot papers. He noted down the total number of ballot papers rejected in each round of counting. He also saw voting mark in favour of the petitioner on the rejected ballot papers. Time and again he raised objections against the rejection of votes orally but not in writing. P.W. 1 did not instruct him at any time in the course of his rounds to note down the serial number at least of a few ballot papers on which votes were marked in favour of the petitioner and they were improperly rejected even though he brought to P.W. 1's notice specific instances of such rejection. It did not strike him either to note down the serial number of a few such rejected ballot papers.

P.W. 4 C. Abdul Jaleel is said to be another counting agent for the petitioner. He states in his evidence that he was in charge of general supervision of the counting in his capacity as a counting agent on behalf of the petitioner. He further states that some of the ballot papers were rejected on the ground that they contained ink-marks. He cannot give the number of ballot papers rejected on the ground that they contained ink marks. He cannot also give the number of ballot papers rejected on which votes were recorded in favour of the petitioner. In his cross-examination he states that identification card was obtained for him only to act as counting agent. No special identification card was obtained for him to be in charge of general supervision of the counting. He further states that he personally saw the ballot papers being rejected by the counting staff on the ground that they contained ink smudge marks. He did not note down the serial number of any of those rejected ballot papers. During the course of his general supervision, he was moving around times to note down the serial number of at least a few of the rejected ballot papers on the ground they contained ink marks. His counting agents had noted down the serial numbers of

such rejected ballot papers on a note-paper but they did not hand over the paper to him.

P.W. 5 Dharendra Kumar is the proprietor of a Hindi Weekly Newspaper. He claims to have acted as a counting agent for the petitioner. He is a friend of the petitioner for the past 10 years. His evidence is that in the beginning of the counting, some ballot papers were rejected on the ground they contained some ink impressions. The counting officials themselves rejected the ballot papers. He objected three times against the decision of the counting officials in rejecting the ballot papers. Voters had recorded their votes in favour of the petitioner in more than 650 ballot papers out of about 850 to 900 ballot papers rejected at his table. In his cross-examination, he stated that he did not note down the serial number of the ballot papers rejected on the ground that they contained ink marks as the counting staff told him that he should not make any note of the serial numbers. He did not complain against the conduct of the counting staff regarding this, either to the ARO or RO. He says that in more than 600 rejected ballot papers votes were marked in favour of the petitioner because he could see the marking of the votes in favour of the petitioner in those ballot papers at the time of scrutiny.

P.W. 6 Budmal Bohra says he was also a counting agent for the petitioner. He was asked to watch the counting at the table in which votes polled at the Mamulpet polling station were being counted. He does not know the number of the table. He was watching the counting at that table. In the meanwhile, P.W. 1 came and told him that since there was shortage of the counting agents for the petitioner, he should go round all the counting tables in that hall and watch the counting. He further says that most of the votes were rejected on the ground that those ballot papers bore ink smudge marks. About 450-500 ballot papers were rejected on this ground. Out of these rejected ballot papers in about 350 to 375 ballot papers voters had recorded their votes in favour of the petitioner. He admitted in the cross-examination that he did not obtain permission from the RO to go around the counting hall and watch the counting at all the tables in the counting hall. As regards the rejection of the ballot papers, this is what he has stated :

"I say that over 600 ballot papers were rejected in our counting hall because I was informed so at the end of the counting of the votes in our hall.

It is my estimate that 450 to 500 ballot papers were rejected on the ground that they contained ink smudge marks as I had seen the rejection of the ballot papers on those grounds during the course of my supervision. I did see the marking of the votes in favour of the petitioner by the voters in about 350 to 375 rejected ballot papers."

The only other witness whose evidence is relevant on this point is P.W. 9 G. Gangadhara. He also says that he was a counting agent for the petitioner. In his chief examination, he says that the counting staff rejected the ballot papers containing smudge marks in spite of the counting agents of the petitioner pointing out that they were valid votes. The counting staff rejected over 1000 ballot papers on the ground that they contained smudged marks. In more than 800 such rejected ballot papers, voters had recorded their votes in favour of the petitioner. He was present till the counting was over. In his cross-examination, he says that he and other counting agents did not make any note of the mistakes, committed by the counting staff in rejecting the ballot papers, which they pointed out to them. The counting staff kept the doubtful votes containing the smudge marks separately even though he and others pointed out that those ballot papers were valid votes, saying that they could take up the matter later. They further told him that they were not concerned with doubtful ballot papers. However, they did not affix any seal or stamp over them. He could not say what had happened to those ballot papers. At the end of the counting, the counting staff told him that over 1000 ballot papers were rejected. It was his estimate that in about 800 ballot papers voters had recorded their votes in favour of the petitioner. He further adds that he had seen the voting mark in favour of the petitioner in those 800 ballot papers at the time of counting.

19. Generally, an order granting verification and recount of the ballot papers in an election petition is sought through an interlocutory application in that behalf. However, in this

case, the petitioner claimed such a relief in the main petition. When a court is called upon to consider this question it should not ignore the safeguards which have been ensured in Part V of the Conduct of Election Rules, 1961 (for short 'Rules').

Under Rule 52, provision is made for the appointment of adequate number of counting agents by each of the candidates to watch the process of counting. Rule 53 provides for the admission of candidates, their election agents and counting agents to the place fixed for counting of votes. The RO shall also decide which counting agent or agents shall watch the counting at any particular counting table or group of counting tables. It is also provided that any person who, during the counting of votes, misconducts himself or fails to obey lawful directions of the RO may be removed from the place where the votes are being counted by the RO or by any police officer on duty or by any person authorised by the RO in that behalf. The only other persons who are to be allowed to the counting place during the process of counting are the counting supervisors, the counting assistants, the persons authorised by the Election Commission and public servants on duty in connection with the election. All other persons are excluded from the place fixed for the counting. Rule 54 emphasizes the maintenance of the secrecy of voting. Rule 55 deals with scrutiny and opening of ballot boxes. Before a ballot box is opened at a counting table, the counting agents present at that table shall be allowed to inspect the paper seal or such other seal as might have been affixed thereon and to satisfy themselves that it is intact. The RO himself has to take care to see that no ballot box has, in fact, been tampered with. If the RO is satisfied that any ballot box has, in fact, been tampered with, he shall follow the procedure laid down in Section 58 in respect of that polling station. Rule 56(1) lays down that the ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinized. Sub-rule (2) of Rule 56 provides the grounds for rejecting a ballot paper. Sub-rule (3) lays down that before rejecting any ballot paper under sub-rule (2), the RO shall allow each counting agent present a reasonable opportunity to inspect the ballot paper. The remaining sub-rules prescribe the other procedure relating to the counting, making the entire in the result sheet in Form-20 and announcing the particulars. Thus, it is clear from the scheme of Rule 56 that every opportunity is available to the representatives and counting agents of the candidates to examine each ballot paper and objections can be raised in respect of it, if the election agent or the counting agents feel that there was anything wrong in the matter of verification and counting. It is only after the objections raised have been disposed of in accordance with R. 56, that the stage of counting of votes begins. Even after the completion of the counting of votes, it is open to a candidate and in his absence his election agent or any of his counting agents to make an application in writing to the RO to recount the votes either wholly or in part stating the grounds on which he demands such recount. This is the implication of sub-rule (2) of Rule 63. After all the procedure has been gone through, the RO completes the result sheet in Form-20 and signs it. Once that is done, men no application for recount shall be entertained thereafter by him. Thus it is seen from the general scheme of the Rules framed for the counting of the votes, that every candidate his election agent, and counting agents have ample opportunity to examine the voting papers before they are counted and in case the objections raised by them have been improperly over-ruled, he would know precisely the nature of the objections raised and the voting paper to which those objections related. It is clear from sub-para (m) of para 17 in Chapter IX of the Hand Book for Returning Officers issued by the Election Commission of India, imparting instructions to the ROs dealing with the question of rejection of a ballot paper that before finally rejecting any ballot paper, reasonable opportunity should be given to the candidate or his agent present at his table to inspect it and if the agent wants to note down the serial number of any ballot paper on the ground of its doubtful validity for any reason or its wrong rejection by the RO, he may allow them to do so. There is also every opportunity to the agent present at his table to find out the table at which, the round during which and the segment in which such ballot paper was marked as doubtful vote.

20. In this background it is apropos to discuss the evidence adduced by the petitioner in support of the allegation that large number of votes recorded in his favour by the voters

were unlawfully rejected on the simple ground that those ballot papers contained ink smudge mark.

P.W. 1 was the chief election agent of the petitioner. He is an experienced person in the election field having contested the election for a Loka Sabha seat twice, though unsuccessfully. He asserts about 5000 valid votes cast in favour of the petitioner were rejected as invalid votes on the ground that the ballot papers contained some ink smudge mark in addition to the voting mark. He proceeds to say that on the day of polling during his visit to several polling booths, he found no wet cloth or rag was provided to illiterate voters for wiping out the wet ink left on their thumb, in any of the polling stations, who were required to affix their thumb mark on the counterfoil of the ballot paper before securing the ballot paper from the Presiding Officer for exercising their franchise. According to him, the imprint of the ink smudge mark was left on a number of ballot papers as a result of the illiterate voters holding them in their left hand before marking their vote on it. Even, though he noticed such an omission on the part of the officers conducting the election which he considered a serious lapse on their part, he did not make any grievance out of it with any of them.

Now coming to the question of invalidation of the votes recorded in favour of the petitioner on the ground that such of those ballot papers contained ink smudge mark in addition to the voting mark, his evidence is that he had come to know it from the very beginning of the counting. He had seen such instances personally. He noticed such instances in all the constituencies and at all the counting tables. Yet he did not note down the serial number of at least one or two of such ballot papers, not even the number of the table at which or round of counting in which they were rejected or the segment to which they belonged. He did not verify from any of his counting agents whether they had noted down the serial number of any ballot paper so rejected. He did not even instruct them to do so. He did not even tell them at least to maintain the account of the total number of ballot papers so rejected at their respective counting tables. Finally he had to admit that his evidence that the total number of ballot papers so rejected came to be about 5000 was based on his estimation and not a correct account.

P.W. 2, Krishna Rao at one stage of his evidence stated that he made a note of the number of the ballot papers rejected by the counting staff on the ground they contained ink smudge mark and informed them to P.W. 1. Soon after, probably realising the damage done by him to the petitioner's case, he changed his version and stated that what he noted down was the total number of ballot papers so rejected and not the serial number of the ballot papers as such. He proceeds to say that he noted down the total number of ballot papers so rejected on a piece of paper. He conveyed that figure to P.W. 1 and P.W. 1 in his turn made a note of it. He tells the Court that while noting down the total number of ballot papers so rejected, he also made a note of the number of ballot papers in which the voters had recorded their votes in favour of the petitioner. He was able to do so by looking into the ballot papers during the process of counting.

P.W. 3 does not throw any new light on this point. According to him about 900 ballot papers were rejected on the ground they contained double impression and out of them at least in about 600-700 ballot papers votes were marked in favour of the petitioner. He admits that P.W. 1 had told him to note down on a piece of paper the details of the counting and the scrutiny of the ballot papers at his table. He only noted down the number of votes secured by each candidate and number of ballot papers rejected at each round of counting. However, he did not note down the serial number of any of the ballot papers rejected on the ground they contained smudge mark.

P.W. 4 claims to be one of the counting agents but placed in general supervision of the counting on behalf of the petitioner. He admits that no permission was obtained for him to be in charge of general supervision of the counting. Though he claims to have seen the rejection of the ballot papers in which voting mark was recorded in favour of the petitioner, on the ground they contained ink smudge mark, he too has not made any note either of the serial number of the rejected ballot papers or of the segments or the rounds of counting. However, he claims to have told his counting agents several times to note down the serial number of at



least a few rejected ballot papers on the ground they contained ink marks. He affirms that his counting agents had noted down the serial number of such rejected ballot papers but they did not hand over the noting papers to him.

P.W. 5 wants to impress that he could not note down the serial number of the rejected ballot papers on the ground they contained ink marks, as the counting staff told him that he should not do so. However, he appeared to have made no complaints either to the ARO or RO against the counting staff.

P.W. 6 was initially assigned to watch the counting at the table at which votes polled at Mamulpet polling booth were being counted. However he says that P.W. 1 later instructed him to go round all the counting tables in that hall and watch the counting on account of shortage of the counting agents for the petitioner. According to him, about 450 to 500 ballot papers were rejected on the ground they contained ink smudge mark and out of them about 350 to 375 ballot papers contained the voting marks in favour of the petitioner. He admits in his cross examination that no permission was obtained from RO or ARO for him to watch the counting of votes at all the counting tables in the counting hall. Though he claims to have seen personally the rejection of ballot papers on the ground they contained smudge marks, he gave the total number of ballot papers so rejected in his evidence from what he learnt at the end of the counting of votes in his hall. He too has not recorded any better particulars of any of the ballot papers so rejected.

The only other witness is P.W. 9 who spoke on this aspect. According to him, about 1000 ballot papers were rejected on the ground they contained smudge marks and out of them he found the voting marks recorded in favour of the petitioner in about 800 ballot papers. However, he too did not record any better particulars of those ballot papers. Though he claimed to have personal knowledge about the rejection of 1000 ballot papers in the beginning of his evidence, later he admitted that it was the counting staff who told him at the end of the counting that over 1000 ballot papers were rejected.

21. The evidence of these witnesses, a synopsis of which is given above, scanned and considered in the light of the elaborate safeguards ensured under the Rules in the matter of counting of votes would leave an impression that their evidence is highly improbable and artificial. Besides, it is vague, indefinite, inconsistent and an after-thought. It is no doubt true that Rule 38(2)(b) of the Rules lays down that at the time of issuing ballot paper to an elector the polling officer shall obtain the signature or thumb impression of that elector on the counterfoil of the ballot paper issued to him. Para 4(2) of Chapter I of the Hand Book for Returning Officers, issued by the Election Commission of India shows that the system of taking the signature or thumb impression of the voter on the counterfoil of the ballot paper before its delivery to him, when system was dispensed with in May, 1975, has again been revived. So, it was stated therein that the Presiding Officers must be told that no ballot paper shall be issued by them to any elector unless the signature or thumb impression of the elector has been obtained on the counterfoil of the ballot paper. Para 9(a) of Chapter VIII provides instruction to the Returning Officer that he should inform all the Presiding Officers and the Polling Officers in the Polling rehearsals about this important change in the voting procedure and clearly impress upon that no ballot paper should be issued to any elector unless his signature or the thumb impression has been obtained on the counterfoil of the ballot paper.

There is no provision either in the Rules or in the Hand Book for Returning Officers to provide wet cloth or rag to the illiterate voters to clean their thumb after they put their thumb impression on the counterfoil of the ballot paper and before the issue of the ballot paper to them to record their vote. Be that as it may the allegation made by the petitioner in his petition that neither wet cloth nor rag was provided to the illiterate voters at the polling stations has been emphatically denied both by the 1st and the 12th respondent in their statement. Respondent-9 also in his written statement denied this allegation. No question was put to the Returning Officer (R.W. 3) on this aspect while he was in the witness box. Further, if really it was the grievance of P.W. 1 and he

had noticed the omission on the part of the officers in-charge of the polling in this regard, certainly he would have brought it to the notice of the Presiding Officers or to the notice of the Returning Officers or to the notice of the Returning Officer. The fact that he did not do so would lead to the inference that he had no occasion to raise any such issue. In other words, it is reasonable to hold that the election authorities must have made all proper arrangements.

22. As regards the rejection of the votes on the ground that they contained smudge marks, I am not impressed with the evidence of the witnesses examined on behalf of the petitioner. It was not as if they could not make a note of the details, such as the table at which, the round during which and the segment in which the ballot papers were rejected on the ground they contained ink smudge mark in addition to the voting mark in favour of the petitioner, the nature of the objections raised and by whom? the serial number of the rejected ballot papers at least a few, if not all of them; the total number of the ballot papers so rejected etc. Some of the witnesses examined on behalf of the petitioner claim to be well-experienced in the matter of election as well as the counting of votes. Yet none of the witnesses would give the ground on which the ballot papers containing ink smudge mark were rejected—whether on the ground 'no marking' or 'marking on blank area' or 'multiple voting' or 'voter identifiable or mutilated' or 'not genuine' the various grounds specified in the Rules and also reiterated in para 17(m) of Chapter IX of the Hand Book for Returning Officers for rejecting a ballot paper. On the other hand, there is clear instruction to the Returning Officers not to reject a ballot paper when it contained a mark in the column of one candidate but also a smudge appears against that of another candidate (See Para 17(n)(v) of Chapter IX of Hand Book for Returning Officers). It is not the case of any of the witnesses that the ballot papers containing smudge marks were rejected by the RO on the ground that by such mark, the voter was identifiable. In the first place the evidence of the petitioner that the ballot papers were rejected on the ground they contained ink smudge mark, in addition to the voting marking in favour of the petitioner, is wholly unacceptable for the reasons already stated. Secondly there is total absence of evidence that such ballot papers were rejected on the ground that 'voter was identifiable' by the ink smudge mark left on the ballot paper. If the counting staff had rejected the ballot papers on this ground in spite of the protests made by them, certainly the petitioner or P.W. 1 would have raised the issue before the ARO and on his failure to correct the mistake before the RO. No reliable and cogent evidence is forthcoming except parrot-like version of the witnesses that they registered their protests orally for everything. This grievance was not even mentioned in the application filed by P.W. 1 under Rule 63(2) of the Rules before the 1st respondent for recount of the votes. No contemporaneous document is produced. It is also to be noticed that some of the witnesses are highly interested in the petitioner, a few of them being his own employees. It looks to me that this allegation was clearly an afterthought, coined for the purpose of bolstering up an imaginary ground in support of the election petition.

23. One other point that requires to be considered in this context is the argument of Sri R. N. Narasimha Murthy counsel for respondent-12 that the petition is bereft of a concise statement of material facts in support of the allegation that about 5000 valid votes cast in favour of the petitioner were rejected unlawfully on the ground that they contained ink-smudge marks as required under Section 83(1)(a) of the Act. I have already excerpted the averments made in paragraphs 17 and 28 of the petition relating to this matter. No elaborate discussion would be necessary to point out that the statement made in paras 17 and 28 do not conform to the provisions contained in clause (a) of sub-section (1) of Section 83 of the Act. The petition does not contain any details as to the table at which, the round during which and the segment in which the ballot papers were so rejected. It is silent as to the nature of the objection raised and by whom. There is no mention of the serial number of a single ballot paper rejected on that score, not even a whisper as to the head under which the ballot papers containing the ink smudge mark were rejected. These, in my view, are the material facts that should have been stated in the election petition in support of the allegation that large number of valid votes recorded in favour of the petitioner were unlawfully rejected on the ground that they contained ink smudge marks. This conclusion I reach gathers substantial support

from the observation of the Supreme Court in the rulings cited above in Dr. Jagjit Singh's case (2), Jitendra Bahadur's case (3) and Bhabhi's case (5).

24. Incidentally I consider it necessary to notice here and now one other argument advanced by Sri V. Krishna Murthy on this question. He argued at considerable length placing reliance on a number of English decisions and also certain passages from Halsbury's Laws of England as well as Parker's Conduct of Parliamentary Elections Edited by W. H. Woolston (1970) that the ballot papers can be rejected on the ground that they contain certain mark other than the voting mark when the identity of the voter can be established inter-insidically from the ballot paper and the writing or the mark must be such that the voter can be and not merely might possibly be identified. I do not think that I need consider this argument elaborately as this argument was proceeded on the assumption that the ballot papers on which the ink smudge marks were found were rejected by the concerned authorities under the head 'voter identifiable'. As I said before, there is absolutely no reliable and cogent material placed before the Court to show that any ballot paper was rejected on that ground. Hence this argument, in my view, is not opposite in the circumstances of the case.

Thus considering the argument of the learned counsel for the petitioner from all its aspects, I see no substance in the second point. Sri V. Krishna Murthy, however, in the course of his argument submitted that point No. 2 urged by him by itself stands on very slender support without point No. 1, though it does give support to the prayer for verification and recount of the ballot papers. I have considered the merits of Point No. 2 hereinabove. Now I shall proceed to consider the first point.

25. On this point, the line of arguments of Sri V. Krishnamurthy was proceeded on the basis of the alleged discrepancies in the ballot paper account in Part I and Part II of Form-16 and also in the Final Result sheet in Form-20 into which the entries from Part-II of Form-16 were posted. The learned Senior Counsel emphasized that there are 37 instances of excess votes being counted than the ballot papers used by the voters at the corresponding polling stations on the day of polling and about 100 instances in which the ballot papers counted were less than the ballot papers used, which, according to him, would give rise to an inference of wrong counting. By way of illustration he made pointed reference to some of the documents to demonstrate his point and further submitted that his reasoning in respect of those documents would hold good in respect of the remaining instances as well. I shall therefore, proceed to consider in detail only those documents referred by him in the course of his arguments. It is also necessary to notice that the only witness examined on this point is P.W. 1, the Chief Election Agent of the petitioner.

26. The first instance pointed out by Sri V. Krishna Murthy was one relating to polling station No. 54 of Basavanagudi Assembly Segment. Ex. P. 8 is the book containing the certified copies of Part-I and Part II of Form-16 relating to Basavanagudi Assembly Segment, the original of which is Ex. R. 8. Ex. P. 2 is the file containing the certified copy of the final result sheet in Form-20 relating to all the Assembly Segments, the original of which is Ex. R. 9. Part I and Part II of Form-16 relating to Polling Station No. 54 is found at page 106 and 107 respectively of Ex. P. 9. The evidence of P.W. 1 relating to this item is found at page 27 of his deposition reads thus :

"At page 106 of Ex. P. 9 the total No. of ballot papers received were shown as 1170 whereas there is a note stating that "1080 Ballot Papers was shown to the authority given". The unused ballot papers were shown as 473 and used 697. At page 107 in part II the No. of ballot papers noted were 697. The figure of 697 was taken to Ex. P. 2 at page-20".

It was contended that the total number of ballot papers issued, that is, not issued to the voters would be far less than 473, if the number is calculated with reference to the serial numbers of the unused ballot papers given in Part I of Form-16. On this assumption it was further argued that the Ballot Papers used should have been more than 697.

the number shown to have been used. Thus, it was contended that what was actually counted i.e., 697 ballot papers was less than the ballot papers used by the voters. It is true that as per the Sl. Nos. of the unused ballot papers given in Part-I of Form-16, the total number of unused ballot papers would come to less than 473 shown therein. It seems to me that there was an error committed by the polling staff in noting the serial numbers of the unused ballot papers in the ballot paper account. This can be demonstrated with little effort from the other entries found in the document. As per the entries, the total number of ballot papers received was 1170. The bundle of ballot papers received consisted of a series bearing continuous serial numbers. There is no dispute about this. The other entries are unused ballot papers 473; used ballot papers 697 and ballot papers to be found in the ballot box 697. Actual number of ballot papers found in the ballot box at the time of counting is shown as 697 in Part II of Form-16. The same entries are also found in the corresponding original Form-16 in Ex. R.8. The very fact that the number of ballot papers found in the ballot papers shown by the polling staff in Part-I of Form-16, to be found in the ballot box, ensures the correctness of the total number of ballot papers unused at 473 recorded therein. From these facts as disclosed from the entries in Form-16, it is obvious that the noting of the serial numbers of the unused ballot papers in Part-I of Form-16 by the polling staff was a clear clerical error.

27. The second instance relates to polling station No. 63 of Chickpet Assembly Segment. Ex. P. 4 is the book containing the certified copy of Part-I and Part II of Form-16, the original of which is Ex. R. 3. The ballot paper account relating to this polling station in Form-16 Part I and Part II is found at pages 12 and 124 respectively of Ex. P. 4. The evidence of P.W. 1 in respect of this document is as follows vide page 3 of his deposition :

"Ex. P. 4 is the book containing the certified copy of Part-I and II of Form-16 pertaining to Chickpet Division. At page 124 in Ex. P. 4, the total No. of votes counted were shown as 690 as against the correct number of 709. At page 12 in Ex. P. 2, the same figure of 690 as against the correct figure of 709 was noted."

As per the entry in Part I of Form-16, the total number of ballot papers received was shown as 1320. There is no dispute about this. The ballot papers unused without the signatures of the Presiding Officer; the ballot papers used at the polling station and the ballot papers to be found in the ballot box were each shown as 690. The actual number of ballot papers found in the ballot box at the time of counting was shown as 690 in Part-II.

It was contended by Sri V. Krishnamurthy that if 690 were the unused ballot papers out of the total of 1320 ballot papers received at the polling station, the figure of 690 ballot papers being the used ones by the voters was erroneous. For the same reason, he also maintained that the figure of 690 ballot papers to be found in the ballot box was also an incorrect figure. It should be a much lower figure. If it was so, and must be so according to him, the counting staff could not have found 690 ballot papers in the ballot box at the time of counting. On this ground he maintained that there was a wrong counting.

The fallacy of this argument can be made out easily from the document itself. The serial numbers of the ballot papers unused without the signature of the Presiding Officer were given as 404561 to 405190 and under the column 'total', it was noted as 690. On a proper calculation of the ballot papers unused with reference to the serial numbers, the same would come to 630 and not 690 as noted therein. That the figure 690 being the unused ballot papers without the signature of the Presiding Officer was a clear mathematical error is also obvious from the fact that 690 ballot papers were actually found in the ballot box at the time of counting which tallies with the figure of 690 ballot papers to be found in the ballot box shown in Part I of Form-16. The entries in the certified copies exactly tally with the entries in the corresponding original of the ballot paper account Ex. R. 3.

28. The next instance relates to polling station No. 52 of Binnypet Assembly Segment. Ex. P. 5 is the book containing the certified copy of Part I and Part II of Form-16 relating to Binnypet Assembly Segment, the original of it is Ex. R. 4. The evidence of P.W. 1 relating to this polling station is found at page 20, reads as follows:—

“At page 101 in Ex. P. 5 the total No. of ballot papers received were shown as 1140, unused as 558 and used at the polling station 557. In part-II at page 102, the used ballot papers at the polling station was shown as 557. The figure of 557 was carried to Ex. P. 2 at page 14.”

Part I and Part II of Form-16 relating to Polling Station No. 52 is found at page 101 and 102 respectively of Ex. P. 5. The total number of ballot papers received at this polling station was 1140, total number of ballot papers used was 558, out of which one ballot paper was cancelled and the total number of ballot papers to be found in the ballot box was 557 as per the entries in Part-I of Form-16. The actual number of ballot papers found in the ballot box at the time of counting was 557 as could be ascertained from Part II of the ballot paper account.

The only comment made by Sri Krishnamurthy was that the details of the unused ballot papers were not recorded in Part-I. No doubt it is so. But I do not think that the omission to mention the details of the unused ballot papers by the polling staff in the ballot paper account would in any way vitiate the process of counting, since the actual number of ballot papers found in the ballot box at the time of counting was the same as the number of ballot papers shown to be found in the ballot box in Part-I of Form-16. The entries in the certified copy of Form-16 exactly tally with the entries in the corresponding original in Ex. R. 4.

29. The next one relates to the Polling Station No. 28 of Jayanagar Assembly Segment. Ex. P. 7 is the book containing the certified copies of Part I and Part II of Form-16 relating to the Jayanagar Assembly Segment, the original of which is Ex. F. 6. The evidence of P.W. 1 in respect of the ballot paper account of Polling Station No. 28 is found at page 24 of his deposition reads thus :

“At page 55 of Ex. P. 7, in Part-I the total No. of ballot papers received at the polling station was shown as 1060. Ballot papers unused were 480 and ballot papers used were 550 instead of the correct figure of 580. At page 56 in Part-II, the total No. of ballot papers used was shown as 550 and the same figure was taken to Ex. P. 2 at page 23.”

Certified copy of Part I and Part II of Form-16 relating to Polling Station No. 28 is found at pages 55 and 56 respectively of Ex. P. 7. The total number of ballot papers received and the ballot papers to be found in the ballot box is shown as 1060 and 550 respectively. The serial numbers of the ballot papers not issued—both with the signature and without the signature of the Presiding Officer—were separately given. However, the serial number of the first ballot paper in the series of not issued ballot papers with the signature of the Presiding Officer, was incorrectly noted as 77371. On verification of the corresponding original ballot paper account in Ex. R. 6, it is found that that serial number was 773371. The serial numbers of the series of ballot papers not issued—with and without the signature of the Presiding Officer—is shown as 773371 to 773851. In all it comes to 480 ballot papers. It is not disputed that as per the Rules, the Polling Officers are required to issue the ballot papers to the voter, starting with the ballot paper bearing the lowest serial number of the series received and in the ascending order continuously till the voters are exhausted. As stated above, the serial number of the first not issued ballot paper of the series was 773371. This shows that the serial number of the last ballot paper issued in the series was 773370. The serial number of the last ballot paper received at Polling Station No. 28 was 773881 and the serial number of the last ballot paper that was not issued was 773851. From these facts it is clear that the ballot papers bearing serial numbers in between 773851 and 773881 were also the ballot papers not issued which comes to 30 ballot papers. However, there is an omission in not showing these 30 ballot papers with their serial numbers as the ballot papers not issued under the

appropriate column in Part-I by the Polling Staff. Thus the total number of ballot papers not issued would come to 510 and not 480 as stated by P.W. 1 and also as contended by Sri V. Krishnamurthy. As I said before, the ballot papers to be found in the ballot box as per Part I of Form-16 was 550 and the total number of ballot papers actually found in the ballot box at the time of counting was also 550 as seen from Part II. Certain omission caused or errors made by the Polling Staff in making the entries in Part-I of Form-16 would not render the counting vitiated or throw any doubt as to its correctness, if it is found otherwise accurate. Thus, I see no merit in this contention.

30. This takes me to the next instance which pertains to Polling Station No. 31 of Chamarajpet Assembly Segment. Ex. P. 6 is the book containing the certified copies of Part I and Part II of Form-16 relating to Chamarajpet Assembly Segment, the original of which is Ex. R. 5. What P.W. 1 has stated in relation to this polling station is found at page 27 of his deposition reads thus :

“At page 61 of Ex. P. 6 the total No. of ballot papers received were 1350, unused 837, used 515 instead of the correct figure of 513, ballot papers cancelled 19 and ballot papers to be found in the ballot box 505 instead of the correct figure 494. At page 62 in Part II, the ballot papers shown were 505. The figure of 505 was taken to Ex. P. 2 at page 17”.

Part I and Part II of Form-16 relating to Polling Station No. 31 is found at pages 61 and 62 respectively of Ex. p. 6. The total number of ballot papers received at this polling station was 1350, the serial numbers of these ballot papers being 576441 to 577790. There is no dispute about it. There is also no dispute as to the total number of ballot papers not issued being 837. The total number of ballot papers used was shown as 515 in the certified copy of Part-I whereas in the original in Ex. R. 5, it was shown as 513. Thus it is obvious that the entry in the certified copy furnished to the petitioner regarding the total number of ballot papers used at the polling station being 515 is a clerical mistake for 513 ballot papers.

Para 4 of Part I of Form-16 gives the total number of ballot papers not inserted into the ballot box out of the ballot papers used at the polling station. Sub-para (a), (b) and (c) furnish the different classification under which used ballot papers are not being inserted into the ballot box. At the polling station No. 31, in all 8 ballot papers out of the total number of 513 ballot papers used were not inserted into the ballot box. Out of these 8 ballot papers, 3 ballot papers were not inserted under sub-para (a)—ballot papers cancelled for violation of voting procedure—under Rule 39. There remained only five ballot papers out of the total of 8 ballot papers not inserted into the ballot box. Again 8 ballot papers were shown under sub-para (b)—ballot papers cancelled for other reasons—as having not been inserted into the ballot box. This figure of 8, therefore, was obviously a clerical error for ‘5’ since the total number of ballot papers not inserted into the ballot box out of the used ballot papers, was only 8. If these 8 ballot papers not inserted into the ballot box are deducted from 513 ballot papers used at the polling station, it would come to 505 and that was recorded in Part I as the number of ballot papers to be found in the ballot box. Actually, 505 ballot papers were found in the ballot box at the time of counting as shown in Part II. The evidence of P.W. 1 in this regard is thus demonstrated to be incorrect from relevant entries in the ballot paper account.

31. Sri V. Krishnamurthy, next pointed out another instance in the same Chamarajpet Assembly Segment in respect of Polling Station No. 69 in aid of his contention. Part I and Part II of Form-16 relating to this booth is found at pages 137 and 138 respectively of Ex. P. 6. The evidence of P.W. 1 on this item is found at page 28 reads thus :

“At page 137 of Ex. P. 6 the total No. of ballot papers received at the polling station were 980, unused 475, used 505 and to be found in the ballot box 475 instead of the correct figure 505. At page 138 in Part II, the ballot papers were shown as 475. The figure of 475 was taken to Ex. P. 2 at page 18”.

Sri Krishnamurthy endeavoured to score a formidable point in favour of the petitioner on this document. His argument proceeds on the basis that, since the number of ballot papers not issued to the voters was shown as 475, it necessarily follows that the ballot papers used were 505 and that should have been the number of ballot papers to be found in the ballot box, whereas the ballot papers to be found in the ballot box shown in Part-I and the actual number of ballot papers found at the time of counting was only 475. Hence he argued that this is a clear case of mis-counting or wrong counting of the ballot papers which was less by 30 ballot papers than the ballot papers ought to have been found in the ballot box. The fragility of this contention can be demonstrated with little effort by a close scrutiny of the contents of the document.

There is no dispute as to the total number of ballot papers received at the polling station and their serial numbers. The total number of ballot papers received was 980 and their serial numbers were 618291 to 619270. It is also not disputed, as stated earlier that as per the rules, the first ballot paper bearing serial number 618291 being the first ballot paper in the series received at the polling station and thereafter the ballot papers bearing serial numbers in the ascending order were to be issued till all the voters who came to the polling station to cast their vote were exhausted. However, as entered in Part I of Form-16 the serial number of the ballot papers not issued "with the signature of the Presiding Officer" starts with serial No. 618291 that is the first ballot paper in the series received at the polling station and ends with 618750, the total ballot papers comes to 460. The ballot papers not issued "without the signature of the Presiding Officer" commences from 618751 to 618766, that is the next continuous series in the ascending order, the total of which is shown as 15 though the actual total works out at 16. This would show that either the total struck by the polling staff was wrong or a clerical error was made in giving the serial number of the series of the ballot paper under that head. Again a figure of 505 is shown against the column "total" of the unused ballot papers. The column showing the used ballot paper is kept blank. On a bare reading of the entries made in Part-I one would not doubt get an impression that the total number of ballot papers not issued was 475 but on deeper scrutiny for the reasons stated above, this was the number of ballot papers that were actually issued to the voters and not 'not issued' to the voters as appear on the face of the record. Reasonably it follows that the remaining ballot papers of this series supplied to the polling station were the ballot papers not issued being the last ballot papers in the series. This conclusion I reach gains support from the fact that 505 ballot papers were shown to have been the total number of ballot papers not issued. However, as stated supra, there is a slight error in the calculation of the total number of ballot papers, not issued "without the signature of the Presiding Officer" being shown as '15' instead of '16' if calculated on the basis of the serial number of the series of the ballot papers given in Part-I of Form-16. In that case the total number of ballot papers issued to the voters would come to 476. However, we find in Part I that the total number of ballot papers to be found in the ballot box was recorded as 475 and the actual number of ballot papers found at the time of counting in the ballot box as per Part II was also 475. Thus there is a difference of one ballot paper between the number of ballot papers issued to the voters as per calculation on the one hand, and the number of ballot papers entered in Part-I 'to be found' and that actually found in the ballot box at the time of counting on the other, for which we do not find any answer either in the evidence or from the document. However I may hasten to add that there is no difference between the ballot papers to be found in the ballot box as noted in Part-I and the number of ballot papers actually found at the time of counting as shown in Part-II. Thus, I see no force in this contention also.

32. Another instance to which pointed reference made by Sri V. Krishnamurthy was in relation to Polling Station No. 30 of Gandhinagar Assembly Segment. Ex. P. 3 is the book containing the certified copies of Part I and Part II of Form-16 relating to Gandhinagar Assembly Segment of which Ex. R. 2 is the original. Part I and Part II of Form-16 relating to the Polling Station No. 30 is found at pages 59 and 60 respectively of Ex. P. 3. The total number of

ballot papers received at the polling station was 1080. Ballot papers used were 664 and ballot papers to be found in the ballot box were also 664 as per Part I of Form-16. There is a clerical error in recording the number of ballot papers unused, 316 ballot papers were shown as the unused ballot papers as against the correct figure of 416 ballot papers. This can be verified from the serial numbers of the unused ballot papers given in the document. They were the ballot papers bearing Serial Numbers 283365 to 283780. On proper calculation it would come to 416 ballot papers.

Now coming to the counting, 664 ballot papers were actually found at the time of counting as can be seen from Part II of Form-16 at page 60 Part II gives the details of the individual votes secured by each candidate. The certified copy of Part II shows that respondent-12 secured 190 votes. The evidence of P.W. 1 relating to this polling station is found at pages 3 and 17 of his deposition reads as follows :—

"At page 60 in Ex. P. 3, the total number of votes counted were shown as 664 as against the correct No. 656".

At page 59 in Ex. P. 3, the total number of ballot papers received was shown as '080, unused 316 and used at the polling station 664 in Part I. Whereas the ballot papers used is shown as 664 in Part II at page 60. The figure of 664 was carried to Ex. P.2 at page 90".

On verification of the original document Ex. R. 2 relating to Part-II of Form 16 of Polling Station No. 30, it is found that the total number of votes secured by the 12th respondent was entered as 198 and not 190 as shown in the certified copy. Thus, it is obvious that 190 votes secured by R-12 shown in the certified copy of Part-II of Form-16 was a clerical error. If the votes secured by respondent-12 is counted as 198 in my opinion it must be counted so then 664 ballot papers found at the time of counting in the ballot box was correct. The same figure of 664 was carried to Ex. P.2 and also Ex. R.9, the certified copy and the original final result sheet in Form-20. However, while recording the individual votes secured by respondent 12 only 192 votes as against 198 votes secured by him were entered in the final result sheet thereby the total number of votes secured by respondent-12 was reduced by six votes. The evidence of P.W. 1 at page 3 was based on the mere reading of the entries in the certified copy of Part II wherein the individual votes secured by respondent-12 was shown as 190 as against 198 votes secured by him and on that count, he calculated that the total number of ballot papers to be found in the ballot box was 656 and not 664 as recorded in Part-I of Form-16. It is relevant to notice that the total number of ballot papers found in the ballot box at the time of counting was 664 as per Part-II. This shows that the evidence of P.W. 1 that there was a wrong counting of the votes found in the ballot box has no substance.

33. The last instance on which reliance was placed on behalf of the petitioner was one relating to polling station No. 54 of Jayanagar Assembly Segment. Ex. P. 7 is the book containing the certified copies of Part I and Part II of Form-16 relating to Jayanagar Assembly Segment of which Ex. R. 6 is the original. Part I and Part II of Form-16 relating to Polling Station No. 54 is found at Page 106 and 107 respectively of Ex. P. 7. It could be seen from Part I that 1130 ballot papers consisting of the series bearing Sl. Nos. 802171 to 803300 were received at the polling station. It was also recorded therein under the appropriate column that 506 ballot papers were used at the polling station. Similarly it is recorded that 504 ballot papers were to be found in the ballot box. Coming to Part-II, it is seen that 504 ballot papers were found in the ballot box at the time of counting.

The evidence of P.W. 1 relating to this document is found at page 7 reads as follows :—

"At page 107 in Ex. P.7, the total number of votes polled were shown as 504. Whereas in Ex. P. 2 at page 24, it was shown as 514"

Sri V. Krishnamurthy contended on the basis of the above material that at the final stage of the counting, the Returning Officer counted 10 more votes than what was actually found

at the time of counting. This instance, according to the learned Counsel, would be a very strong base to support this conclusion that there was a wrong counting or miscounting of the votes.

Before adverting to the merits of this argument, I would like to refer to some more relevant entries in the certified copies of Part I and Part II of Form-16. As I stated earlier, the bundle of ballot papers received at this polling station contained in all 1130 ballot papers bearing the serial numbers starting from 802171 to 803300. Out of these ballot papers received, ballot papers bearing Sl. Nos. 802686 to 803288 were shown to have been unused. It is further shown, that out of the ballot papers unused, ballot papers bearing Sl. Nos. 802686 to 802700 were with the signature of the Presiding Officer and ballot papers bearing Sl. Nos. 802701 to 803288 were without the signature of the Presiding Officer. Under Para 4, 2 ballot papers bearing Sl. No. 803299 and 803300 were shown to have been the ballot papers used at the polling station but not inserted into the ballot box and again under sub-para 4(a) one more ballot paper bearing Sl. No. 802397 was shown to have been cancelled for violation of voting procedure under rule 39. On a perusal of the above entries, it is clear that only the ballot papers commencing in the series bearing Sl. Nos. 802171 to 802685 and the two ballot papers last in the series bearing Sl. Nos. 803299 and 803300 were issued to the voters, the reason being that as per the rules, ballot papers required to be issued to the voters by the Polling Officers are the ballot papers commencing from the first ballot paper in the series and in the ascending order and in the case of tendered ballot papers, they should commence from the other end of the series. The ballot paper shown to have been cancelled for violation of the voting procedure under rule 39 and not inserted into the ballot box was also included in these series. Again we have two more ballot papers bearing the Sl. Nos. of the last and last but one in the series of the ballot papers supplied to the polling station shown to have been used at the polling station but not inserted into the ballot box. These two ballot papers should necessarily fall under the category of tendered ballot papers; in view of their Sl. Nos. being the last and last but one in the series of the ballot papers supplied to the polling station as is evident by virtue of rule 42(3)(a) of the rules. Further those two tendered ballot papers were not correctly entered under the appropriate column in Part-I. I also noticed another clerical error in noting the serial numbers of the unused ballot papers. As I adverted above, the only ballot papers that were issued to the voters were the ballot papers starting with Sl. No. 802171 and ending with Sl. No. 802685 and the last two ballot papers in the series bear the Sl. Nos. 802299 and 803300. The ballot papers therefore that were unused, were those ballot papers bearing Sl. Nos. commencing from 802686 to 803298 and not 803288 as entered therein. On a proper calculation of the ballot papers issued to the voters other than the two tendered ballot papers, the total number of ballot papers issued would come to 515. If we add the two ballot papers issued to the voters but treated as tendered ballot papers to the total of 515, the total of the ballot papers issued or used would come to 517 and not 506 as shown in Form-16. Out of these 517 ballot papers used at the polling station, 3 ballot papers viz; the two tendered ballot papers and one ballot paper cancelled for violation of voting procedure under rule 39, were not inserted into the ballot box as per the entries in Part-I, the result being that 514 ballot papers and not 504 as shown under the appropriate para were to be found in the ballot box.

In the certified copy of Part-II, the total number of ballot papers and not 504 as shown under the appropriate para were number tallies with the number of valid votes secured by all the candidates put together as could be seen from the other entries in Part II. On verification of the entries in the original of Part II contained in Ex. P 6, I noticed that the total number of ballot papers found at the time of counting in the ballot box was recorded as 514 including the 10 rejected ballot papers. Thus, it is obvious that in the certified copy of Part-II, there was a clerical error in not showing the rejected ballot papers. However, while posting the entries into the final result sheet in Form-20, the correct figure of 514 ballot papers were taken into account. This was the evidence of P.W. 1 and also borne out from the records. Thus, I see no merit in this contention also.

34. A close scrutiny of the documents and the evidence adduced by the petitioner on this aspect of the case and

the foregoing detailed discussion adverting to them, would clearly point out that all that the petitioner is able to point out is that there appears some seeming discrepancies but not real ones in ballot paper account due to certain mistaken entries in Part-I and Part-II of Form-16 and also in the final result sheet in Form-20. They were all due to clerical errors either in noting the serial numbers of the ballot papers or in striking out the total or in entering them in the appropriate column in Part-I of Form-16. However, I find no difference in the number of ballot papers recorded in Part-I under the column "to be found in the ballot box" and the actual number of ballot papers found at the time of counting as noted in Part-II of Form-16, except in one case in which the petitioner was able to point out a difference of one ballot paper, that too on the basis of the calculation of the figures with reference to the serial number of the unused ballot papers furnished in Part-I. It was not unlikely that even that mistake was due to an accidental slip in noting the serial number of the unused ballot papers thereby raising the number of ballot papers to be found in the ballot box by one. Factually even with regard to that solitary instance, it is found that the number of ballot papers 'to be found in the ballot box' as recorded in Part-I exactly corresponds to the number of ballot papers found at the time of counting as could be seen from the entries in Part-II. This fact would suggest that the ballot papers to be found in the ballot box were supposed to be more by one ballot paper than what was recorded in Part-I but factually it was not so.

35. Now coming to the evidence of P.W.1 on this aspect of the case, it is my considered view that the petitioner cannot draw any valid assistance in support of the point under consideration. The whole of his evidence on this aspect was nothing but reading the contents of the certified copies of the ballot paper account in Form-16 and the final result sheet in Form-20 and pointing out certain apparent inconsistencies noticed by him on reading them. Sri Krishnamurthy, learned Senior Counsel appearing for the petitioner, in the course of his argument has fairly submitted that the points canvassed in respect of the specific instances referred and stressed by him, would equally apply to all the 37 alleged instances of excess votes being counted and about 100 instances in which the ballot papers were counted less than the ballot papers used. Basing on this submission, I must hold that the reasoning adopted by me in dealing with the instance referred hereinabove would equally apply in respect of the other instances of alleged miscounting, although no specific reference was made to them on behalf of the petitioner except advancing a general argument. In the absence of any specific argument built upon in respect of any other specific instance, it would be hazardous to wade through the evidence of P.W. 1 and scrutinize all the entries referred by him in his evidence.

36. Sri V. Krishnamurthy next contended that the 12th respondent scored his victory over the petitioner by a slender majority of 2727 votes and this would serve as one of the factors justifying verification and recount of the ballot papers. I see absolutely no force in this argument. In the Indian democracy consisting of multi-party system, there used to be multi-cornered fights not only by political parties but also by large number of independents for a single seat to the legislatures in the States or the Centre, the voters being large for each constituency, more so to the Lok Sabha Constituency which consists of several Assembly Segments, large number of voters among them being illiterates, the success of a candidate by a few votes over his nearest rival would be considered as his tremendous success and further it shall have a greater impact on the electorates of the constituency, especially in view of the various safeguards provided under the rules for the proper counting of the votes and to exclude any possible mischief or trickery to be played by any of the persons involved in the process of counting. The election in the instant case is a striking example of the situation explained above.

20 Candidates were in the field to contest a single Lok Sabha seat from the Bangalore South Constituency of whom some contested on party-tickets and some as independents. The Constituency consisted of 8 Assembly segments. As many as 4,41,783 electors exercised their franchise. The 12th respondent was declared elected with a margin of 2727 votes over his nearest rival, the petitioner herein. The margin of votes in the situation explained above by which the success of the 12th respondent over the petitioner cannot be treated as marginal so as to justify verification and recount of all the ballot papers. The Supreme Court has time and again em-



phasized that the slender majority of votes polled by the winning candidate over his nearest rival will not be a ground for recount (See *Bhabhi's Case* (5) and *Ram Autar v. Ram Gopal* (6) A.I.R. 1975 S.C. 2182. In the former case the difference was only 94 votes in which the Supreme Court did not permit even sample inspection as ordered by the Election Court and in the latter case, the difference was only 22 votes in which the Supreme Court did not approve the election Court's order for general scrutiny and recount of the ballot papers. Thus, I see no force in this contention.

37. On the same line of argument *Sri V. Krishnamurthy* next contended that there was large number of ballot papers rejected as invalid and this again would point out that there was no proper verification of the ballot papers and the authorities competent to take a decision on this aspect did not apply their mind before taking the decision. This argument does not appeal to me for the reasons I presently show.

In the first place I do not consider that the rejection of the ballot papers was very large when compared to the total number of votes polled. As I observed earlier, 4,41,783 electors had exercised their franchise out of which only 8067 ballot papers were rejected. It cannot be disputed that large number of voters were illiterates. Added to this, there were 20 candidates in the field. Naturally, the size of the ballot paper must have been comparatively big, consisting of 20 names with corresponding 20 symbols all printed on one side of the ballot paper. In these state of affairs and also taking into account the large number of voters who had exercised their franchise being illiterates, rejection of 8067 votes, in my opinion, cannot be considered large, as the learned Counsel for the petitioner wanted me to understand. Secondly, this circumstance would suggest that *Sri R. N. Narasimhamurthy*, learned advocate for the 12th respondent was right in his submission that the counting was done cautiously and methodically by exercising due care and diligence in the verification of the ballot papers. So I find no merit in this argument.

38. The next contention of *Sri V. Krishnamurthy* was that this is the first case of the kind on the points raised or granting an order of verification and recount, in-as-much as the petitioner is able to produce not only oral evidence but also documentary evidence to show that there was defect in the process of counting. He further contended that the verification and recounting of the ballot papers does not mean that it relates to the ballot papers found in the ballot box but one has to go behind the stage of actual counting and verify the accounts of the ballot papers supplied to each polling station, the ballot papers used, unused and to be found in the ballot box as recorded in Part I of Form-16 and the accounts of the ballot papers shown in Part II of Form-16 after the counting of the votes. The mere fact that the petitioner has adduced oral and documentary evidence in support of his plea for verification and recount of the ballot papers by themselves would not make the case, the first of its kind on the points raised. Much would depend upon the value and the efficacy of the material produced. I have scanned and scrutinised both oral and documentary evidence produced with meticulous care and caution in the earlier portion of the order and pointed out how unacceptable they are. Further the stand taken by the petitioner to show that the result of the election of respondent-12 has been material affected was on account of improper reception of invalid votes in favour of the 12th respondent, improper rejection of valid votes cast in favour of the petitioner, improper inclusion of valid votes cast in favour of the petitioner, in favour of other respondents and contravention of rules 53, 55 and 56 of the 'Rules'. All these grounds relate to the stage of actual counting of the ballot papers after the polling was over. In that view, the argument advanced to stretch the scope of the enquiry beyond the ambit of verification of the ballot papers and the counting of the votes cannot be sustained. The ballot paper account in Form-16 will be considered only to the extent it is relevant for the purpose of finding out the regularity in the verification of the ballot papers and counting of the votes. In that view, the relevancy of Part I of Form-16 is limited to the extent of the ballot papers to be found in the ballot boxes and Part-II of Form-16 which gives the details of the ballot papers found in the ballot boxes. The other details in Part-I of Form-16 have no relevancy considering the scope of the enquiry in this case, in view of its limited ambit. Thus, I see no force in this submission also.

39. The next argument of *Sri V. Krishnamurthy* was that as per the particulars recorded in Part I of Form-16, the total number of ballot papers to be found was 4,41,648 but the ballot papers actually found in the ballot boxes at the time of counting were only 4,41,256. Thus there was a difference of 392 ballot papers which is a prima facie evidence of miscounting. The conclusion I reached earlier on a consideration of the argument advanced on the alleged inconsistencies found in Part-I and Part-II of Form-16 by the learned Counsel for the Petitioner will be a complete answer to this argument. No further elaboration is necessary on this point.

40. *Sri V. Krishnamurthy* next placed strong reliance on a decision of the Supreme Court in *P. MALAI CHAMI v. M.A. AMBALAM* (7) AIR 1973 S.C. 2077 in which the Supreme Court approved and confirmed the order of the election Judge directing a general recount and argued that the facts and circumstances of this case squarely falls within the ambit of the above decision. The grounds on which the election judge granted an order for recount of the votes have been enumerated in para 2 of the decision of the Supreme Court. The Election Judge, on the scrutiny of the evidence, reached the conclusion that those grounds were established by evidence. The Supreme Court proceeded on the basis that all those grounds on which the election judge relied in support of granting an order for general recount, were established in that case and the order passed by the Election Judge for a general recount on those established grounds was well founded. In the instant case, I noticed in the course of this order that the petitioner has not established the allegations made in the petition in support of the ground for verification of the ballot papers and a general recount of the votes. Thus, in my view, the above decision will not help the petitioner to advance his case in the nature of the evidence adduced by him.

41. As regards the other allegations made in the petition, other than the two points canvassed by *Sri Krishnamurthy* in the course of his arguments, it may be noticed that *Sri Krishnamurthy* did not press them, in my opinion, rightly, for my consideration. The evidence adduced to substantiate those allegations in vague, indefinite, inconsistent and highly interested. No detailed discussion of the evidence is necessary in view of the stand taken by *Sri Krishnamurthy*. Suffice it to say that those allegations have not been substantiated by cogent and satisfactory evidence.

42. Now coming to the argument canvassed by *Sri R. N. Narasimha Murthy*, learned Advocate appearing for the 12th respondent, I need not consider them in detail as most of the points urged by him have been covered in the course of the discussion of the evidence with reference to the points canvassed on behalf of the petitioner. However, I would like to refer incidentally to one argument advanced by him relating to the absence of a concise statement of material facts as required u/s 83(1)(a) of the Act in the election petition regarding the allegations made in respect of the alleged discrepancies in Part I and Part II of the ballot paper account in Form-16 and the corresponding entries in the final result sheet in Form-20.

It is no doubt true that in the first instance the petitioner has merely stated in the petition (vide Para 19) that the total number of votes are not tallying with Form-16. No further details or particulars have been furnished in the petition regarding this allegation. However, the petitioner filed an application I.A. II under order VI rule 17 read with Section 151 C.P.C. seeking permission to amend the petition by incorporating the averments set out in paragraphs 19(A) to 19(D) just after paragraph 19 of the Election Petition. That application was contested by respondents 9 and 12. This Court by a considered order dated 28-10-1980 allowed that application.

It was the submission of *Shri R. N. Narasimha Murthy* that though this Court has allowed the amendment, since the petitioner failed to amend his election petition after the said order by incorporating paragraphs 19(A) to 19(D) within the time allowed under law, the petitioner cannot rely upon the averments contained in those paragraphs by virtue of Order VI Rule 18 C.P.C. In that view, that submission was that the election petition was left in its original condition. On this basis, he contended that the election petition suffers from want of concise statement of material facts in support of the allegations made in respect of the ballot paper accounts and the final result sheet.



As against this, Sri V. Krishnamurthy, learned Senior Counsel appearing for the petitioner, submitted that the plea raised by Sri R. N. Narasimha Murthy was nothing but a technical plea and that the petitioner could seek permission of the Court to extend time even at the stage of argument. However, he maintained that Sri Narasimha Murthy cannot raise this plea at the time of argument since he has not raised such an objection in his additional written statement dated 28-11-1980. If he had raised such an objection, the petitioner would have sought for extension of time for incorporating the amendment allowed by this Court, in the election petition. He further submitted that he would like to meet the technical plea raised by Sri Narasimha Murthy by a technical plea.

I do not think that I need record any finding on this question in the light of the points canvassed by Sri V. Krishnamurthy in the course of his argument and the view I have taken on those points.

43. I have discussed the evidence adduced and all the relevant material placed on record. It is time for me to close the discussion. However, I find it extremely useful before closing the case to refer to a note of caution sounded by the Supreme Court in *CHANDA SINGH v. SHIVA RAM* (8) A.I.R. 1975 S.C. 403, speaking through V. Krishna Iyer. It reads :—

"A democracy runs smooth on the wheels of periodic and pure elections. The verdict at the polls announced by the Returning Officers leads to the formation of Governments. A certain amount of stability in the electoral process is essential. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The general reaction, if there is judicial relaxation on this

issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only a few hundred votes as here, to ask for a recount. Micawbershly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of misconduct or illegality on other compulsions of justice necessitating such a drastic step".

44. In view of the stand taken by Sri V. Krishnamurthy at the time of argument restricting his contentions on two primary points, I do not find it necessary to discuss in detail the various issues formulated for decision. In the light of my discussion on the points raised by Sri V. Krishnamurthy, and the conclusion reached thereon, my findings on issues Nos. 1 to 13 and 16 to 18 are all in the negative. As regards issue No. 14, as I have observed earlier, I noticed certain clerical mistakes in making the entries in Part I and Part II of Form-16 by the concerned Officials. However, those clerical mistakes would not demonstrate that there has been clear violation of the provisions of Section 100(1)(d) (iv) of the Act for the reasons already recorded in the body of this order. I answer this issue accordingly. Issue No. 15 does not arise for decision since no argument was addressed on the question covered under this issue. Issue No. 19 also does not survive for consideration in view of my findings on other issues relating to the main relief.

45. In the result, for the reasons stated above, this Election Petition fails and is dismissed with costs of Respondent-12. The other respondents do bear their own costs. Advocate's fee is fixed at Rs. 500.

Sd/- N. R. KUDOOR, Judge  
17-8-1981

[No. 82/KT-HP/1/80]

V. K. RAO, Under Secy.

## भारत निर्वाचन आयोग

### आदेश

नई दिल्ली, 28 नवम्बर, 1981

आ० अ० 1390—यत्. निर्वाचन आयोग का समाधान हो गया है कि मई, 1980 में हुए बिहार विधान सभा के लिए साधारण निर्वाचन के लिए 266-बड़का गांव निर्वाचन-क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री राजेन्द्र प्रसाद ग्राम-पहरा, पोस्ट ह्वेवई, थाना-बड़का, गांव, जिला जहरीबाग (बिहार) लोकप्रतिनिधित्व अधिनियम, 1951 तथा उर्ध्वान बनाए गए नियमों द्वारा अपेक्षित करने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे है ;

और यत् उक्त उम्मीदवार को भेजी गई सूचना अधिनियम वापस आ गई है और निर्वाचन आयोग का यत् समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है।

अतः अब उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री राजेन्द्र प्रसाद को संसद के किसी भी सदन के या किसी राज्य विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहिम घोषित करता है।

### ORDERS

New Delhi, the 28th November, 1981

**O.N. 1390.**—Whereas the Election Commission is satisfied that Shri Rajendra Prasad, Vill Pahra, P.O. Hewai, P.S. Barkagaon, District Hazaribagh (Bihar) a contesting candidate for general election to the Bihar Legislative Assembly held in May, 1980 from 266-Barkagaon Constituency, has failed to lodge an account of his election expenses at all as required by the Representation of the People Act, 1951, and the Rules made thereunder:

And whereas the Notice issued to the candidate was returned undelivered and the Election Commission is satisfied

[सं बिहार वि०स०/266/80 (356)]

that he has no good reason or justification for the failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Rajendra Prasad to be disqualified for being chosen as, and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-LA/266/80(356)]

नई दिल्ली, 7 दिसम्बर, 1981

आ०अ० 1391—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी लोक प्रतिनिधित्व अधिनियम 1951 तथा तद्विषयक नियमों द्वारा अपेक्षित समय के भीतर और नीचे की सारणी के स्तम्भ (5) में यथा उपदिष्ट रूप में अपने निर्वाचन व्ययों का लेखा वाखिल कर में प्रस्तुत करता है ;

और उक्त अभ्यर्थियों ने समयक सूचना दिए जाने पर भी उक्त प्रसफलता के लिए या तो कोई कारण प्रस्तुत नहीं किया है या उनके द्वारा दिए गए अभ्यावेदनों पर यदि कोई हो विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त प्रसफलता के लिए कोई पर्याप्त कारण या व्यायोजित्य नहीं है.

अतः अब निर्वाचन आयोग का उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरस्त घोषित करता है ।

## सारणी

क्रम सं	निर्वाचन की विधि/विधियाँ	लोक सभा निर्वाचन क्षेत्र की क्रम० सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम एवं पता	निरस्तता का कारण
1	2	3	4	5
1.	बिहार लोक सभा निर्वाचन 1980 (बिहार)	12-शिवहर	श्री राज नन्दन साह गांव माधुरापुर डाकखाना गम्हरिया (बेग) जिला सीतामढ़ी (बिहार)	लेखा वाखिल नहीं किया ।
2.	—वही—	22-जगरिया (अ० जा०)	श्री हरि लाल राम गांव सुन्दरी पोस्ट आलायोग बरहामु जिला पूर्णिया (बिहार)	लेखा समय के अन्दर तथा रीति में दाखिल नहीं किया
3.	—वही—	23-कधानगज	श्री जोशेश्वर डोम गांव कलपीर बोबीगुज पोस्ट—शिवगंज जिला पूर्णिया (बिहार)	लेखा वाखिल नहीं किया ।

[सं० 76/बिहार लो० सं०/80]

आदेश से

सी० एल० रोज, अवर सचिव  
भारत निर्वाचन आयोग

New Delhi, the 7th December, 1981

O.N. 1391.—Whereas the Election Commission is satisfied that each of the contesting candidate specified in column (4) of the Table below at the election to the House of the People as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (2) of the Table below to be disqualified for being chosen as, and or being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. Particulars of election No.	S. No. & Name of the Assembly/Parliamentary constituency	Name of the contesting candidates	Reason for disqualification
1	2	3	4
1. General Election to the House of the People, 1980 (Bihar)	12—Sheohar	Shri Raj Nandan Sah, Vill. Madhurapur, P.O. Gamharla (Dheng), Dist. Sitamarhi (Bihar).	Account not lodged

1	2	3	4	5
2.	General Election to the House of the People 1980 (Bihar)	22—Araria (SC)	Shri Hari Lal Ram. Vill. Sundri, Post Ashabhog, Batraha, Dist. Purnea (Bihar)	Account not lodged in time & in the manner required by law.
3.	-do-	23—Kishanganj	Shri Jogeshwar Dore, Vill. Kalpir Bibiganj, Post. Bibiganj, Dist. Purnea (Bihar)	Account not lodged.

[No. 76/BR-HP/80]

By Order,  
C. L. ROSE, Under Secy.

नई दिल्ली, 7 दिसम्बर, 1981

आ.सं. 1392.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा/राज्य विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी लोक प्रतिनिधित्व अधिनियम, 1951 तथा लक्ष्मी बनाए गए नियमों द्वारा अपेक्षित समय के भीतर और गति में उक्त सारणी के स्तम्भ (5) में यथा उपदिष्ट रूप में अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण प्रस्तुत नहीं किया है या उनके द्वारा दिए गए अभ्यावेदनों पर यदि कोई ह्यो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः प्रत्येक निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस प्रावेश की तारीख में तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

## सारणी

क्रम सं०	निर्वाचन की विशेषितियाँ	विधान सभा/लोक सभा निर्वाचन क्षेत्र की क्र० सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम तथा पता	निरर्हता का कारण
1	2	3	4	5
1.	राजस्थान विधान सभा के लिए साधारण निर्वाचन 1980	80—करोली	श्री पम्पोला, नवी बरखेड़ा, तहसील करोली, जिला सवाई-माधोपुर (राजस्थान)	विधि द्वारा अपेक्षित कोई भी लेखा दाखिल करने में असफल।
2.	-वही-	80—करोली	श्री भजन माल, होलीखार तहसील करोली, जिला सवाई माधोपुर (राजस्थान)	विधि द्वारा अपेक्षित कोई भी लेखा दाखिल करने में असफल।

[सं 76/राज०/81(165-166)]

प्रादेश से,

धर्म वीर, भवर सचिव  
भारत निर्वाचन आयोग

New Delhi, the 7th December, 1981

O. N. 1392.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People/State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure,

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S. No. & Name of the Assembly/Parliamentary Constituency	Name and address of the contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to Rajasthan Legislative Assembly, 1980.	80—Karauli	Shri Pampola, Nadi Ber Kheda, Teh : Karauli, Distt. Sawaimadhopur (Rajasthan).	Failed to lodge any account of election expenses required by law.
2.	-do-	80—Karauli	Shri Bhajan Lal, Dholi Khar, Teh : Karauli, Distt. Sawaimadhopur (Rajasthan)	Failed to lodge any account of election expenses required by law.

[No. 76/RJ/81(165-166)]

By Order,

DHARAM VIR, Under Secy.